

1
2 UNITED STATES DISTRICT COURT
3 DISTRICT OF OREGON
4 PORTLAND DIVISION

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5 ADIDAS AMERICA, INC, a Delaware corporation;
6 ADIDAS AG, a foreign entity; ADIDAS
7 INTERNATIONAL MARKETING B.V., a foreign
8 entity; REEBOK INTERNATIONAL LTD, a
9 Massachusetts corporation; and REEBOK
10 INTERNATIONAL LIMITED entity, a foreign
11 entity,

Plaintiffs,

-against- No. 3:15-cv-02113-SI

12 TRB ACQUISITIONS LLC, a New York limited
13 liability company, CUTIE PIE BABY, INC., a
14 New York corporation, ELITE PERFORMANCE
15 FOOTWEAR, LLC, a New York limited liability
16 company, GINA GROUP LLC, a New York limited
17 liability company, ONE STEP UP, LTD., a New
18 York limited company, SARAMAX APPAREL GROUP,
19 INC., a New York corporation, UNITED LEGWEAR
20 COMPANY, LLC, a New York limited liability
21 company, ACTIVE BASICS LLC, a New York
22 limited liability company USPA ACCESSORIES,
23 LLC DBA CONCEPT ONE, CONCEPTS, LLC, a New
24 York limited liability company, IMX, LLC, a
25 New York limited liability company, KIDZ
CONCEPTS, LLC, a New York limited liability
company, Q4 DESIGNS LLC, a New York limited
liability company, C.D.B. BRANDS LLC, a New
York limited liability company, and LA KIDZ
INC., a New York corporation,

Defendants.

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21 JEFFREY TEBELE
22 September 29, 2016
23 New York, New York

24 Reported by: Gilbert Bowles
25 Job No. 113307

1 J. TEBELE

2 Q. To Arent Fox?

3 A. Yes.

4 Q. At that point your involvement
5 stopped?

6 A. Correct.

7 Q. Do you recall when you first met
8 with TRB or with Arent Fox regarding the
9 collection of documents in this case?

10 A. It was the end of '15 or
11 early '16. I'm not sure exactly.

12 Q. And do you recall what
13 specifically they asked you to do?

14 A. To collect documents and e-mails.

15 Q. And they -- and they provided you
16 with the list of these ten or so names?

17 MR. ROMAN: Objection to form.

18 A. Yeah.

19 Q. Was there anyone else within TRB
20 who was involved in collecting documents?

21 A. Not that I'm aware.

22 Q. So then is it accurate that you
23 have access to everyone's e-mails and
24 everyone's folders?

25 A. Yeah.

1 J. TEBELE

2 Q. Does TRB have any kind of
3 document-retention policy?

4 A. No.

5 Q. Is there any kind of informal
6 document-retention policy?

7 A. No.

8 Q. Is there any reason that you know
9 of that TRB employees purge or delete or get
10 rid of e-mail or documents?

11 A. No.

12 Q. They generally keep everything.

13 A. Yeah.

14 Q. Do you know how TRB communicates
15 with its licensees?

16 MR. ROMAN: Objection to form.

17 A. E-mails, telephones, in person.

18 Q. Are there any letters between TRB
19 and its licensees?

20 A. Not that I'm aware.

21 Q. But in the ordinary course of
22 business, TRB uses e-mail to communicate with
23 its licensees?

24 A. Yeah.

25 Q. And specifically, I would like to

1 J. TEBELE

2 A. I'm not sure.

3 Q. Active Basics?

4 A. I'm not sure.

5 Q. CDB?

6 A. I'm not sure.

7 Q. And you said before that you
8 believe that TRB has presentations to or from
9 its licensees that it keeps in its document
10 management system?

11 A. I'm not sure. I would imagine so.

12 Q. Who would know that?

13 A. Whoever creates the presentations.
14 I don't know.

15 Q. Who would know -- or who would
16 have e-mail communication with TRB licensees?

17 A. Julie.

18 MR. ROMAN: What's the last name?

19 THE WITNESS: I'm not sure.

20 A. Ely.

21 MR. ROMAN: Say the whole name,
22 please.

23 A. Ely Yedid, probably Nina Critti,
24 probably Jerry Yoskowitz. But I'm not sure
25 on those two. But Julia and Ely definitely.

1 J. TEBELE

2 Q. Do you know how often or what the
3 frequency of e-mail communication is between
4 TRB and its licensees?

5 MR. ROMAN: Objection to form.

6 A. Regularly.

7 Q. Regularly; so like every day?

8 A. I don't know that exact frequency
9 but often.

10 Q. So weekly at least?

11 A. I would imagine so.

12 Q. What about faxes, does TRB ever
13 use faxes?

14 A. Not that I'm aware.

15 Q. Do you know how TRB gets
16 information related to its royalties from its
17 licensees?

18 MR. ROMAN: Objection to form.

19 Also, just note for the record,
20 it's outside the scope of the 30(b)6.

21 A. I'm not sure.

22 Q. Do you know that they get sales or
23 other information related to royalties from
24 their licensees?

25 MR. ROMAN: Same objection.

1 J. TEBELE

2 A. I don't go through people's
3 e-mail, so I only go there when there's a
4 problem. But I would imagine so, but I'm not
5 sure.

6 Q. Have you ever seen any kind of
7 royalty report or any other kind of sales or
8 financial information from TRB's licensees?

9 A. No.

10 MR. ROMAN: Objection to form.

11 Q. I'm sorry --

12 A. No.

13 Q. How does TRB maintain its
14 financial records?

15 MR. ROMAN: Objection to form.

16 A. I believe in the -- Dynamics is
17 the name of the program, and Excel.

18 Q. Can you tell me what Dynamics is?

19 A. It's a financial package made by
20 Microsoft.

21 Q. How long has TRB used it?

22 A. I'm not sure exactly. I'm
23 guessing about a year.

24 Q. About the time they switched over
25 from the 365 to Gmail?

1 J. TEBELE

2 A. I'm not sure exactly.

3 Q. It would have been, you think,
4 sometime in 2015?

5 A. Again, I'm not sure exactly, but I
6 would say about then.

7 Q. Can you describe for me what it is
8 that Dynamics does; does it simply house
9 financial information, or what function does
10 it perform?

11 A. It's an accounting package, so
12 general ledger, financial stuff like that.

13 Q. That would include sales data,
14 profits data, that sort of thing?

15 MR. ROMAN: Objection to form.

16 A. Profit, yes. Sales, I'm not sure
17 if they use it for that.

18 Q. Do you know how they keep track of
19 sales?

20 A. No.

21 Q. Do you know how they keep track of
22 inventory or sales of units of products?

23 A. No.

24 Q. Do you know how they keep track of
25 dollar amounts of sales?

1 J. TEBELE

2 A. From what I understand, Dynamics.

3 Q. And do you understand where or how
4 TRB tracks royalty payments that it's owed
5 from its licensees?

6 A. From what I understand, Dynamics.

7 Q. So just to be clear, it's your
8 understanding that TRB maintains its royalty
9 records, anything related to royalty
10 payments, et cetera, and its licensees in the
11 Dynamics software.

12 MR. ROMAN: Objection to form.

13 A. I believe so. I'm not sure.

14 Q. Who would know that?

15 A. Nina.

16 Q. What's her title briefly?

17 A. She serves controlling function,
18 controller.

19 Q. And then you mentioned in -- well,
20 one other question on Dynamics:

21 When TRB switched over to
22 Dynamics, what did it use prior to Dynamics?

23 A. Just spreadsheets.

24 Q. Just Excel spreadsheets?

25 A. Yeah.

1 J. TEBELE

2 Q. And when it made that switch to
3 Dynamics sometime in 2015, did it import data
4 prior to that transition into the Dynamics
5 system?

6 A. I don't know.

7 Q. You may have just answered my next
8 question, but does -- separate and apart from
9 the Dynamics, does TRB use Excel for its
10 financial records?

11 A. I think so.

12 Q. So they -- so right now they keep
13 records both in Excel -- let's take an
14 example.

15 So for records for 2016, do they
16 keep financial records both in Excel and in
17 Dynamics?

18 A. I would imagine so.

19 Q. But you don't know for sure?

20 A. I don't know for sure.

21 Q. Who would know that; would that be
22 Nina?

23 A. Yeah.

24 Q. That was yes?

25 A. Yes.

1 J. TEBELE

2 Q. But prior to the switch to
3 Dynamics in 2015, it kept all of its
4 financial records simply in Excel files?

5 A. Yes.

6 Q. When you went to collect documents
7 for this case in response to Exhibits 1
8 through 3, did you collect financial records
9 in Dynamics and/or Excel?

10 A. Excel, yes; and whatever reports
11 were created from Dynamics, yes.

12 Q. Did you run reports from Dynamics?

13 A. No.

14 Q. Do you know that someone ran
15 reports from Dynamics in response to
16 Exhibits 1 through 3?

17 A. Yeah. Well, I don't know what
18 1 through 3 is, but --

19 Q. Well, the exhibits in front of you
20 that -- document requests and interrogatories
21 from the plaintiffs in this case.

22 A. Yeah.

23 Q. They did run financial reports
24 from the Dynamics in response to Exhibits 1
25 through 3.

1 J. TEBELE

2 A. I'm not sure.

3 Q. Who would know whether reports
4 were run in Dynamics in response to
5 Exhibits 1 through 3?

6 A. Ely or Nina, or Jerry.

7 Q. And were Excel files pulled, as
8 part of TRB's document collection efforts in
9 this case, in response to Exhibits 1
10 through 3?

11 A. It provided all files.

12 Q. So you provided all files that
13 were in the individuals' folders that you
14 named.

15 A. Correct.

16 Q. Separately from that, did you go
17 specifically and collect Excel files that
18 reflected financial records if they weren't
19 within those individuals' folders?

20 MR. ROMAN: Objection to form.

21 A. Repeat the question?

22 Q. So I understand that you collected
23 all the folders and e-mail files from the ten
24 people you mentioned before, right?

25 A. Um-hum.

1 J. TEBELE

2 Q. Yes?

3 A. Yes.

4 Q. Separate and apart from that, did
5 you go and collect any Excel files that
6 contained financial records of TRB that were
7 not within those folders?

8 A. All the files are in those
9 folders.

10 Q. So all the financial records are
11 within those folders.

12 A. The Excels.

13 Q. They are.

14 A. Yeah.

15 Q. Whose folders specifically would
16 they be in?

17 A. I would imagine Jerry and Nina.

18 Q. What's Jerry's title?

19 A. Financial CFO.

20 Q. Does TRB put out any kind of
21 annual or monthly financial statement?

22 A. I'm not sure.

23 Q. Does it have any annual or monthly
24 expense report or cost report?

25 A. I'm not sure.

1 J. TEBELE

2 how that process took place?

3 A. Using a copy.

4 Q. Was the USB drive connected
5 directly to the server, or was it done
6 remotely, or how was it done?

7 A. Connected to the server.

8 Q. Connected directly to the server?

9 A. Yeah.

10 Q. And then with respect to the
11 Google Drive, how were those documents
12 collected?

13 A. They were exported off of Google
14 Drive.

15 Q. How were they exported off of the
16 Google Drive?

17 A. I'm not sure.

18 Q. Did you give any kind of
19 instruction to your employee as to how to
20 export them off of the Google Drive?

21 A. I believe he used the Google Drive
22 app to download it to the computer and then
23 copied it.

24 Q. Do you know when that took place?

25 A. Sure. January, February, March.

1 J. TEBELE

2 MR. HOOKER: Okay. Well, we can
3 stick within the scope of those.

4 BY MR. HOOKER:

5 Q. So with respect to customers and
6 retail accounts, does anyone at TRB
7 communicate with customers and retail
8 accounts with respect to anything having to
9 do with the RBX logo, the RBX mark, or
10 stripes on the wearer apparel?

11 MR. ROMAN: Again, that would have
12 to be outside the scope, because
13 anything that has to do with it, it's
14 about the mark, the logo, and then the
15 stripes on -- I believe the words used
16 are apparel and footwear. So that would
17 be within the scope. Anything outside
18 of that is outside the scope of that
19 notice.

20 Q. So I will ask my question, and we
21 can turn back to whether it's within or
22 outside the scope, but I believe it's within
23 the scope:

24 Do TRB employees communicate by
25 e-mail with customers or retail accounts that

1 J. TEBELE

2 relate, as they relate to use of the RBX
3 mark, the RBX logo, or stripes on footwear or
4 apparel?

5 A. Yes.

6 Q. They do?

7 A. Um-hum.

8 Q. Do you know how often or with what
9 frequency they do?

10 A. On logo and mark, often. And on
11 stripes, no one recalls anything about
12 discussing stripes on products.

13 Q. When you say "often," daily or
14 weekly?

15 A. I guess not -- I don't know about
16 daily but -- because it's based on product
17 releases from all my conversations. So
18 around product releases.

19 Q. Okay.

20 How often do product releases
21 occur?

22 A. From what I understand, regularly,
23 and then stop and start. But there is
24 different categories and different --
25 different categories are different seasons,

1 J. TEBELE

2 and some are not seasonal. So I guess,
3 adding it all up, it could be frequent, maybe
4 weekly or monthly. I don't know exactly.

5 Q. Who would know that?

6 A. Ely or Julie.

7 Q. Ely or Julie?

8 A. Yeah.

9 Q. Does -- do TRB employees
10 communicate with any advertising or marketing
11 agency regarding the RBX logo, the RBX mark,
12 or stripes on footwear or apparel?

13 A. I was told that they had some
14 marketing company in the past, so yes. But I
15 don't know frequency and how often or how
16 recent.

17 Q. Do you know how long ago?

18 It sounds like they no longer have
19 this marketing.

20 A. I think it was either marketing or
21 web company. I'm not sure.

22 Q. Who would know the answer to that?

23 A. Julie or Ely.

24 Q. Do you know when they ceased using
25 that marketing or advertising or web design

1 J. TEBELE

2 that bear the RBX logo, the RBX mark, or
3 stripes?

4 MR. ROMAN: Objection to form.

5 A. Could you repeat the question?

6 Q. Yeah.

7 Does TRB or any of its employees
8 have e-mail communications with any party or
9 person who has any role in designing its
10 products that bear the RBX mark, the RBX
11 logo, or stripes?

12 MR. ROMAN: Same objection.

13 A. Yes, on logo and mark. And again,
14 stripes, no one recalls discussing anything
15 about stripes, so...

16 Q. So with respect to logo and
17 design, do you know what's the frequency of
18 those communications and who they are with?

19 A. Licensees.

20 Q. So licensees have a role in
21 designing product?

22 MR. ROMAN: Objection to form.

23 A. I don't know, but I know that
24 there is an approval process for whatever
25 gets created, so -- and the logo comes into

1 J. TEBELE

2 that.

3 Q. Okay.

4 And the approval process is with
5 the licensees?

6 A. Yeah, from what I understand.

7 Q. And do you know the frequency of
8 those e-mail communications?

9 A. Often. I don't know exactly. And
10 again, around product releases and shipments.

11
12 Q. And your understanding of how
13 often product releases, it is that they are
14 seasonal, and they may happen with some
15 frequency in addition to seasonal changes and
16 products; is that right?

17 MR. ROMAN: Objection to form.

18 A. I'm not really sure. Like
19 specific frequency, I'm not really sure.

20 Q. Do you know if TRB had any e-mail
21 communications with any party or person
22 around the design of the RBX logo?

23 A. Yes.

24 Q. And who would that have been with?

25 A. Licensees.

1 J. TEBELE

2 Q. Anyone else, any -- did they have
3 any other third-party person or firm that
4 helped them design that logo?

5 A. Not that I'm aware of.

6 Q. But the licensees had some input
7 on that?

8 MR. ROMAN: Objection to form.

9 A. The licensees, from what I
10 understand, were instructed -- were provided
11 instructions about logo and trademark on
12 products.

13 Q. Okay.

14 And those related to how to use
15 it, where to put it, that kind of thing?

16 A. Correct.

17 Q. Do you know one way or the other
18 whether licensees had any input on the design
19 of the logo itself?

20 A. No.

21 Q. You don't know?

22 A. From everything I saw, it was
23 one-way communication on the use of the logo.

24 Q. Do you know if invoices, either
25 from or to TRB, relating to use of the RBX

1 J. TEBELE

2 the plaintiffs?

3 A. I don't know exactly how many
4 e-mails, but we just made a call to the
5 forensic company that we gave the data to,
6 and we were able to find out about how much
7 we gave or how much we collected.

8 Q. Okay.

9 And what was that number?

10 A. Roughly, give or take, around
11 300 gig.

12 Q. And that's all, then, that's from
13 all the collections you did --

14 A. I believe so.

15 Q. -- from all the custodians.

16 A. Yeah.

17 Q. What's the name of the forensic
18 company?

19 A. I'm not sure.

20 Q. But that's an outside vendor --

21 A. Correct.

22 Q. And were they -- were they
23 involved after the documents were collected,
24 or were they involved in the collection
25 process itself?

1 J. TEBELE

2 So we received 11 documents that
3 had Julie Jacobs as the custodian.

4 A. Okay.

5 Q. Do you think you collected
6 probably a good bit more than 11 documents
7 from her?

8 MR. ROMAN: Objection to form.

9 A. So Julie came in when the Box
10 system came in, so it's possible that a lot
11 of it happened through that.

12 Q. Her documents would be in the
13 Box.com account?

14 A. Well, her correspondence with
15 those -- whoever she corresponded with on
16 those matters would have just happened
17 through the process of Box.

18 Q. By "Box," you mean Box.com?

19 A. Yeah.

20 Q. Okay.

21 I want to go through one more
22 thing with you. If you would look at this
23 first exhibit that I gave you, the one marked
24 Exhibit 1, if you will turn to page 4 in the
25 document and look at the top of that page

1 J. TEBELE

2 where it says, "Request for Production
3 Number 2," it says: "Documents that refer or
4 relate to TRB's design, selection, or
5 adoption of any disputed three-stripe
6 design."

7 Do you know if any documents were
8 collected that were responsive to this
9 request?

10 A. Again, we didn't, like, pick and
11 choose, so we gave everything for those named
12 people to the e-discovery folks.

13 Q. Okay.

14 If you will turn over with me to
15 page 6, and look in the middle of the page:
16 "Request for Production Number 14: Documents
17 sufficient to identify the date of first sale
18 by TRB of any product bearing a disputed
19 three-stripe design mark."

20 Same question: Do you know if any
21 documents were collected that were responsive
22 to that request?

23 MR. ROMAN: Objection to form.

24 A. It's going to be the same answer:
25 Like we didn't -- we just gave everything.

1 J. TEBELE

2 Q. Okay.

3 If you will turn with me to
4 page 7, up toward the top: "Request for
5 Production Number 18: Documents that refer
6 or relate to the quality, durability, or
7 performance characteristics of each disputed
8 product, including documents that refer or
9 relate to any testing, investigation, or
10 study that TRB conducted or had conducted."

11 Do you know if any documents were
12 collected or responsive to that request?

13 A. Again, we gave whatever we had.

14 Q. Okay.

15 Do you know if -- if anyone at TRB
16 specifically sought out documents relating to
17 the quality of any of its products?

18 MR. ROMAN: Objection to form.

19 A. Say that again?

20 Q. Do you know if anyone at TRB
21 specifically sought out or went to collect
22 documents that related to the quality of its
23 products?

24 MR. ROMAN: Same objection.

25 A. Do I know of any TRB employees did

1 J. TEBELE

2 what about the quality of their product?

3 Q. Did they search for any documents
4 that related to the quality or lack of
5 quality of their products?

6 MR. ROMAN: Objection to form.

7 A. Did they search for them?

8 Q. Did they.

9 A. I'm not sure.

10 Q. You just don't know one way or the
11 other.

12 MR. ROMAN: Objection to form.

13 A. I don't know if they searched.

14 Q. If you will turn the page to
15 page 8, and we'll look at these two together.
16 So the bottom of page 8, Document Request
17 Number 26, asked for: "Documents sufficient
18 to identify the geographic areas in which
19 each disputed product has been permitted,
20 distributed, sold, or offered for sale."

21 And then the following request,
22 Request Number 27, on the next page says:
23 "Documents sufficient to identify each store,
24 website, or other outlet through which each
25 disputed product has been sold or offered for

1 J. TEBELE

2 sale."

3 Do you know if TRB searched for
4 documents that showed where, either
5 geographically or through what stores, its
6 products --

7 MR. ROMAN: objection.

8 Q. -- were sold?

9 MR. ROMAN: Objection to form.

10 Asked and answered.

11 A. I don't know if someone searched
12 for something, if that's your question.

13 Q. Okay.

14 So if I went through the remainder
15 of these document requests and the document
16 requests in Exhibit 2, you would have the
17 same answer for all of those, you don't know
18 one way or the other whether specific --

19 A. Searches were made.

20 Q. -- searches were made or efforts
21 were made to collect specific documents, you
22 just know what you said so far, which is that
23 you collected all the documents from all the
24 TRB employees.

25 A. Correct.